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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,026	08/31/2001	Dennis L. Keiser	W-3749	8524
20995	7590	11/03/2004	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			HWANG, VICTOR KENNY	
2040 MAIN STREET			ART UNIT	PAPER NUMBER
FOURTEENTH FLOOR			3764	
IRVINE, CA 92614			DATE MAILED: 11/03/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/945,026	KEISER, DENNIS L.
	Examiner Victor K. Hwang	Art Unit 3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 July 2004 and 09 August 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 26-33,35-52 and 54-79 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 26-33,35-46,54,55 and 58-64 is/are allowed.
 6) Claim(s) 47-52,57 and 65-79 is/are rejected.
 7) Claim(s) 56 and 77 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 20040809.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 77 is objected to because of the following informalities: on line 2, "rotor" presumably should be changed to --motor--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 47-50, 57, 67-69 and 72 are rejected under 35 U.S.C. 102(b) as being anticipated by *Cook* (US Pat. 5,018,725). *Cook* discloses a stationary frame portion 24 including an operator support 18 having a first side (side facing seat 16) configured so that it can support at least a portion of a back of an operator and a generally opposite second side. An operator input assembly comprises a moveable frame portion 50 moveable relative to the stationary frame portion between at least a first position and a second position along an arcuate path that lies principally to the second side of the operator support. An operator engagement portion 52 is configured to move relative to both the moveable frame portion and the operator support. A resistance assembly 14 is configured to provide resistance to the movement of the engagement portion in at least one direction. The moveable frame portion is supported by an arcuate track assembly comprising a first arcuate track member 44 and a second arcuate track member 46 positioned generally parallel to one another on opposite sides of the moveable

frame portion 50. The operator engagement portion is configured for pivotal movement relative to the moveable frame portion of the operator input assembly. In a first position of the moveable frame, such as at the top of the arcuate tracks, the operator engagement portion can be moved substantially parallel relative to the operator support, and in the second position, such as at the bottom of the arcuate tracks, the operator engagement portion can be moved substantially transverse relative to the operator support. The tracks define an arc substantially concentric to a first reference point disposed on the first side of the operator support, which could be substantially coincident with the shoulders of an operator, depending on how the operator is positioned on the support.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 51, 52, 65, 66, 70 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Cook* (US Pat. 5,018,725) in view of *Piane, Jr. et al.* (US Pat. 5,102,122). *Cook* has been discussed above, and such discussion is incorporated herein. *Cook* discloses the invention as claimed except for the resistance assembly configured to provide resistance independent of gravitational forces (claims 51 and 70); the resistance assembly comprising a

pneumatic cylinder assembly having a piston enclosed within a cylinder (claim 52); the resistance assembly comprises a pneumatic resistance device (claims 65 and 71).

Piane, Jr. et al. has been discussed in the previous Office action, and such discussion is incorporated herein. *Piane, Jr. et al.* discloses that resistance sources such as pneumatic cylinders can be used in place of the disclosed weight stack resistance assembly (col. 3, lines 45-48). Pneumatic cylinder resistance sources function equivalently to weight stack resistance assemblies for providing a resistance to movement of an operator engagement portion.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the exercise apparatus of *Cook* with a pneumatic cylinder resistance assembly, since *Piane, Jr. et al.* discloses that pneumatic cylinders can be used in place of weight stack resistance assemblies since they are equivalent in providing a resistance to movement of an operator engagement portion.

6. Claims 73-75, 77 and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Carlson* (US Pat. 4,720,099) in view of *Breunig* (US Pat. 4,700,946). *Carlson* has been discussed in the previous Office action, and such discussion is incorporated herein. *Carlson* '099 discloses the invention as claimed except for a motor coupled to the moveable frame portion so as to move the moveable frame portion along the arcuate path (claim 73); the motor includes an electric motor (claim 77); a drive mechanism coupled to the motor and to the moveable frame portion (claim 78); and the drive mechanism comprises a threaded drive shaft secured to the stationary frame portion (claim 79).

Breunig discloses an exercise apparatus comprising a stationary frame portion 11; a moveable frame portion 12 moveable relative to the stationary frame portion between at least a first position and a second position; and a manually operated crank mechanism 44 coupled to the moveable frame portion so as to move the moveable frame portion. The crank mechanism turns a threaded drive shaft 50 secured to the stationary frame portion. A motor driven assembly could alternatively be utilized in place of the manually operated crank assembly (col. 3, lines 50-54). It is well known in the art to use electric motors to drive adjustment mechanisms.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the manually operated crank assembly 90 of *Carlson '099* with an electric motor, since *Breunig* teaches that a motor can be utilized in place of a manually driven crank assembly.

7. Claim 76 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Carlson* (US Pat. 4,720,099) as modified by *Breunig* (US Pat. 4,700,946) as applied to claim 73 above, and further in view of *Piane, Jr. et al.* (US Pat. 5,102,122). *Carlson '099* as modified by *Breunig* discloses the invention as claimed except for the resistance assembly comprises a pneumatic device.

Piane, Jr. et al. has been discussed above, and such discussion is incorporated herein. *Piane, Jr. et al.* discloses resistance sources, such as pneumatic or hydraulic cylinders, electronic brakes or stepper motors, can be used in place of the weight stack resistance

assembly (col. 3, lines 45-48). These various resistance sources can therefore function equivalently as resistance sources.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the electronic brakes of *Carlson '099* with pneumatic devices, since *Piane, Jr. et al.* teaches that these resistance sources can function equivalently in exercise apparatus.

Allowable Subject Matter

8. Claims 26-33, 35-46, 54, 55 and 58-64 are allowed.

9. Claim 56 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Salyer (US Pat. 4,549,733) discloses an exercise apparatus having a manually adjustable mechanism and an equivalent electric motor driven adjustment mechanism.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (703) 308-2865 until Nov. 5, 2004. After Nov. 5, the new telephone number will be (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (703) 746-4891 until Nov. 5, 2004. After Nov. 5, the new informal fax number will be the same as my telephone number, (571) 272-4976. The facsimile number for submitting all formal correspondence at this time is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine R. Yu can be reached on 703-308-2675.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang
October 25, 2004



JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

10/29/04